

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 63219-1-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	UNPUBLISHED OPINION
VIVIAN KAREN WINSTON,	)	
	)	
Appellant.	)	FILED: June 14, 2010
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Appelwick, J. — Winston appeals the trial court's order that she pay restitution for the other items contained in a stolen purse as part of her sentence for second degree theft of an access device. Finding sufficient connection to the underlying facts of the crime of conviction, we affirm.

### FACTS

The victim in this case, Amy Morris, left her purse on a hook in a fitting room after trying on clothes. Morris went to the cashier to purchase her items and waited a few minutes before realizing she had left her purse. When she returned to retrieve it, Morris saw Vivian Winston leaving the room she had just been in. Morris approached Winston to ask her if she had seen the purse while simultaneously checking the fitting room to see if the purse was still there. The room was empty.

Morris followed Winston to the cash register. While Winston began to check out at the cashier, Morris asked another employee who had been near the fitting rooms if she had seen the purse. Winston then told the cashier that she would be right back and left without purchasing her items. Morris followed Winston to Winston's car. Morris asked Winston if she could see in her bag. Winston refused and drove away. Morris noted the make, model, license plate number, and distinguishing characteristics of Winston's vehicle. She immediately went into the store and called 911. Morris then searched again for the purse in the fitting room area and nearby racks.

When Seattle Police Officer Jonathan Chin arrived, Morris and the officer reviewed security footage with the store manager. The video showed Morris going into the fitting room. The strap of the purse was visible hanging on a hook. As Morris leaves the fitting room the purse is clearly seen still hanging on the hook. Winston was the next person to enter the room. The video showed the strap of the purse was still visible on the hook after Winston entered the fitting room. While Winston remained in the room, the purse disappeared. The video then showed Winston exiting the fitting room, and immediately greeted by Morris.

After reviewing the footage, Officer Chin drove to the address where Winston's vehicle was registered and questioned Winston regarding the theft. With Winston's permission, he inspected her purse, finding it completely empty. At the end of the interview, the police took Winston into custody for theft. Morris later identified Winston as the woman she had seen leaving the room. Police were unable to recover the purse or its contents.

The State charged and convicted Winston of theft in the second degree—of an

access device, based on the credit cards contained in the purse. The sentencing court imposed \$1,710.85 in restitution for the value of several items in addition to the credit cards, such as the purse, keys, palm pilot and keyboard, a cell phone, a Bluetooth headset, a wallet, cash, and nine gift cards. The court reasoned that the damages for the other items in the purse were causally connected to the charged crime, because the credit card was in the purse.

Winston appeals.

### DISCUSSION

Winston contends the sentencing court erred by ordering restitution for damages not caused by the crime of conviction. A sentencing court's authority to order restitution is purely statutory and, where so authorized, the sentencing court has discretion to determine the amount of restitution. State v. Davison, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991). The exercise of such discretion is reversible only where it is manifestly unreasonable, or exercised on untenable grounds or for untenable reasons. State v. Kisor, 68 Wn. App. 610, 619, 844 P.2d 1038 (1993).

RCW 9.94A.753(3) states in part: "[R]estitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury." Also, restitution "shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property." RCW 9.94A.753(5). These statutes impose a broad responsibility on offenders to pay restitution. State v. Hiett, 154 Wn.2d 560, 565, 115 P.3d 274 (2005).

Restitution is allowed only for losses that are causally connected to a crime and

may not be imposed for a general scheme, acts connected with the crime charged, or uncharged crimes unless the defendant enters into an express agreement to pay restitution in the case of uncharged crimes. State v. Kinneman, 155 Wn.2d 272, 286, 119 P.3d 350 (2005). A sufficient causal connection exists if, but for the criminal acts of the defendant, the victim would not have suffered the damages for which restitution is sought. Hiett, 154 Wn.2d at 568. The prosecution bears the burden of establishing a sufficient causal connection by a preponderance of the evidence. State v. Dedonado, 99 Wn. App. 251, 256, 991 P.2d 1216 (2000).

Winston alleges that causation is not proven in this case. In determining whether a causal connection exists, we look to the underlying facts of the charged offense, not the name of the crime to which the defendant entered a plea. Hiett, 154 Wn.2d at 568. Here, Winston accomplished the taking of the credit card by taking the purse and its contents. Specifically, surveillance video confirmed that the purse was removed from the hook while Winston was using the room. Winston was the only person to use the room after the victim left the purse. There were no facts separate from the general taking of the purse which supported the access device theft.

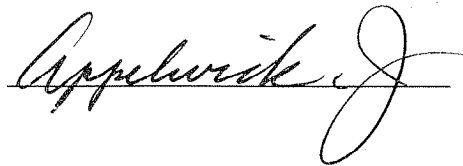
Winston claims even if the access device had not been stolen, the victim would have suffered the other resulting damages. But, Winston did not take the credit card out of the purse and leave the purse and the other contents behind. No one else could have caused the loss of the purse. In order to convict Winston of theft of the credit cards on these facts, the jury necessarily had to conclude that she took the purse. It was a foreseeable consequence that taking the purse, even if solely for the purpose of obtaining the credit cards, would result in a loss to the victim. Given the broad

statutory authority, the trial court did not abuse its discretion in finding that restitution for the loss of the purse and the other items contained within it were sufficiently connected to the crime of conviction.

Winston argues that in order to require restitution on all the items, the State would have been required to charge first degree theft. But, the court is “not precluded from imposing restitution for damages caused by the defendants’ criminal acts simply because the prosecutor could have proceeded to trial on the greater offense or charged additional offenses on the basis of the facts alleged.” State v. Landrum, 66 Wn. App. 791, 800, 832 P.2d 1359 (1992).

Winston took the purse in order to steal the credits cards. But for her theft of the purse, the victim would not have suffered damages. The court did not abuse its discretion in ordering restitution for the full amount of the loss.

We affirm.

A handwritten signature in cursive script, appearing to read "Appelwick J.", written over a horizontal line.

WE CONCUR:

Jan, J.

Becker, J.